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13.07.2022
TN

WPA No. 14078 of 2022

Mousumi Jana and another
Vs.
Calcutta Electric Supply Corporation
Limited and others

Mr. Abhilash Chatterjee
.... for the petitioners

Mr. Suman Ghosh
.... for the CESC Limited

Mr. Noni Gopal Chakraborty
.... for the respondent nos.4 and 5

Learned counsel for the petitioners submits that, pursuant to a final decree of partition, the existing electricity meter of the private respondents is required to be shifted from the portion of the petitioner to that of the private respondents.

Learned counsel appearing for the CESC Limited submits that individual shifting of the meter in the structurally same premises may not be possible.

Moreover, it is contended that the CESC Limited has not received any formal application for

shifting of meter for the CESC Limited to hold any inspection to explore and examine the feasibility of the application.

Learned counsel for the private respondents submits that an application under Order IX Rule 13 of the Code of Civil Procedure for the purpose of recalling the decree and an application under Section 47 of the Code of Civil Procedure are pending in connection with the execution case levied in respect of the partition decree. Bypassing those, the writ petitioners are attempting to get the civil court's decree executed through the writ court.

It is further submitted that the petitioners have sought to cloud the date of the civil court's decree, since the date of the decree mentioned in the prayer portion of the writ petition does not tally with that mentioned in the representation made before the electricity authority.

In reply, learned counsel for the petitioners contends that an execution has already been levied in respect of the final decree of partition.

Since an execution case is already pending in connection with the final decree relied on by the writ petitioners and applications under Section 47 and Order IX Rule 13 of the Code of Civil

Procedure are pending at the present juncture, it would not be prudent to permit the writ petitioners to use the writ court as a pivot for the purpose of having the civil court's decree executed, thereby avoiding the outcome of the said pending proceedings. Since the petitioners have already approached the executing court, there is no scope for the writ court interfering at this premature stage.

Hence, WPA No. 14078 of 2022 is disposed of by granting liberty to the petitioners to reiterate the contentions raised in the present writ petition before the executing court.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)